

**BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS**

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STATE OF ILLINOIS
Pollution Control Board

BROADUS OIL COMPANY,)	
)	
Petitioner,)	
)	
vs.)	
)	PCB No. 10-48
ILLINOIS ENVIRONMENTAL)	(UST Appeal – Petition for Review and
PROTECTION AGENCY,)	Hearing/Appeal)
)	
Respondent.)	

PETITION FOR REVIEW AND HEARING/APPEAL

NOW COMES Broadus Oil Company¹("Broadus"), by its attorneys, Elias, Meginnes, Riffle & Seghetti, P.C., and as and for its Petition for Review and Hearing/Appeal of the Illinois Environmental Protection Agency's final decision with respect to the budget for a High Priority Corrective Action Plan for a certain leaking underground storage tank (LUST) site, states as follows:

BACKGROUND

1. Broadus Oil Company retained Midwest Environmental Consulting & Remediation Services, Inc. (Midwest) to remediate the property located at 1006 West Main Street, Streator, Illinois, LPC #0994905030, LUST Incident No. 891209, 910936 and 980746 (the Property).

2. The Property was the site of early action activities to include UST removal, contaminated backfill removal/disposal and pavement replacement, all within IEPA approved guidelines. The final report of early action activities detailed the work performed. No work was

¹ The current caption is incorrectly labeled "Freedom Oil Company v. Illinois Environmental Protection Agency" (based upon incorrect information previously provided). In fact, this

performed outside the early action guidelines (four (4) foot rule) and was within acceptable IEPA LUST Fund reimbursement requirements.

3. By letter dated November 10, 2009, Midwest submitted a Corrective Action Budget Amendment, seeking payment in the amount of \$88,574.98, which was the amount reasonably and necessarily expended to complete the work on the project. A true and correct copy of that Budget is attached hereto as Exhibit A.

4. By letter dated December 8, 2009, the IEPA rejected the Budget submitted on November 10, 2009. A true and accurate copy of the December 8, 2009 letter and attachments is attached hereto as Exhibit B. That letter was designated as a final and appealable order.

ARGUMENT

The IEPA rejected the Budget based upon the two reasons stated on Attachment A to the denial letter. Broadus Oil Company and Midwest disagree with these determinations, and affirmatively states that the reimbursement amounts expended were reasonable, customary, and necessary for the proper completion of the project and site closure. Specifically, all of the costs listed on Exhibit B were actually and legitimately expended and performed. Additionally, the scope of the additional work performed was within the guidelines pre-approved by the IEPA.

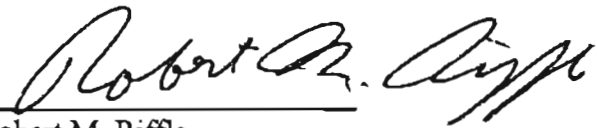
CONCLUSION

For all of the foregoing reasons, Broadus Oil Company respectfully requests a hearing in this matter, which will provide it the opportunity to establish the propriety of the costs, and that the Final Decision be reversed or modified by increasing and accepting the budget as proposed in Exhibit B, thereby allowing payment of the approved budget in the amount of \$88,754.98.

particular location (1106 West Main Street, Streator, Illinois) is owned by Broadus Oil

Respectfully submitted,

Broadus Oil Company, Petitioner

By: 
Robert M. Riffle
Its Attorney

ROBERT M. RIFFLE
Elias, Meginnes, Riffle & Seghetti, P.C.
416 Main Street, Suite 1400
Peoria, IL 61602
(309) 637-6000
610-305

Company. Broadus respectfully requests leave to correct the caption to reflect the proper party.

CERTIFICATE OF SERVICE

The undersigned certifies that on April 9, 2010, a copy of the foregoing document was served upon each party to this case by

☒

Enclosing a true copy of same in an envelope addressed to the attorney of record of each party as listed below, with first class postage fully prepaid, and depositing each of said envelopes in the United States Mail at 5:00 p.m. on said date.

☐

Personal delivery to the attorney of record of each party at the address(es) listed below

☐

Facsimile transmission with confirmation by United States Mail

☐

Via Federal Express - Express Package Service - Priority Overnight

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph Street
Suite 11-500
Chicago, IL 60601

Illinois Environmental Protection Agency
1021 North Grand Avenue East
PO Box 19276
Springfield, IL 62794-9276



Robert M. Riffle
Elias, Meghinnes, Riffle & Seghetti, P.C.
416 Main Street, Suite 1400
Peoria, IL 61602
(309) 637-6000
610-305

CORRECTIVE ACTION BUDGET AMENDMENT
BROADUS OIL COMPANY – PIT STOP WEST
1006 W. MAIN STREET
STREATOR, ILLINOIS; LASALLE CO.
INCIDENT #910936 LPC#17900355011

NOVEMBER 10, 2009

Midwest Environmental Consulting &
Remediation Services Inc.

EXHIBIT

A

A. SITE INFORMATION

IEMA NO. 891209; 910936; 980746

If eligible for reimbursement, where should reimbursement checks be sent? Please note that only owners or operators or USTs may be eligible for reimbursement. Therefore, payment can only be made to an owner or operator.

Pay to the order of: Broadus Oil Corporation of Illinois

Send in care of: Steve Broadus

Address: 201 Danny's Drive, Suite 5

City: Streator State: IL Zip: 61364

Number of Petroleum USTs in Illinois presently owned or operated by the owner or operator; any subsidiary, parent or joint stock company of the owner or operator; and any company owned by any parent, subsidiary or joint stock company of the owner or operator:

Fewer than 101: X 101 or more:

Number of USTs at the site: 10 (Number of USTs included USTs presently at the site and USTs that have been removed.)

Number of incidents reported to IEMA: 3

Incident Numbers assigned to the site due to releases from USTs: 891209; 910936; 980746

Please list all tanks which have ever been located at the site and are presently located at the site:

Product Stored	Size (gallons)	Did UST have a release?		Incident No.	Type of Release
<u>gasoline</u>	<u>8,000</u>	<u>Yes</u>	<u>No</u>	<u>891209, 910936</u>	<u>Overfills</u>
<u>gasoline</u>	<u>8,000</u>	<u>Yes</u>	<u>No</u>	<u>891209, 910936</u>	<u>Overfills</u>
<u>gasoline</u>	<u>4,000</u>	<u>Yes</u>	<u>No</u>	<u>891209, 910936</u>	<u>Overfills</u>
<u>diesel fuel</u>	<u>10,000</u>	<u>Yes</u>	<u>No</u>	<u>980746</u>	<u>Overfills</u>
<u>kerosene</u>	<u>1,000</u>	<u>Yes</u>	<u>No</u>	<u>980746</u>	<u>Overfills</u>
<u>gasoline</u>	<u>10,000</u>	<u>Yes</u>	<u>No</u>	<u>N/A</u>	<u>No release</u>
<u>gasoline</u>	<u>8,000</u>	<u>Yes</u>	<u>No</u>	<u>N/A</u>	<u>No release</u>
<u>gasoline</u>	<u>8,000</u>	<u>Yes</u>	<u>No</u>	<u>N/A</u>	<u>No release</u>
<u>diesel fuel</u>	<u>12,000</u>	<u>Yes</u>	<u>No</u>	<u>N/A</u>	<u>No release</u>
<u>kerosene</u>	<u>2,000</u>	<u>Yes</u>	<u>No</u>	<u>N/A</u>	<u>No release</u>

B. PROPOSED BUDGET SUMMARY AND BUDGET TOTAL

1. Investigation Costs:	<u>\$0.00</u>
2. Analysis Costs:	<u>\$0.00</u>
3. Personnel Costs:	<u>\$3,959.86</u>
4. Equipment Costs:	<u>\$0.00</u>
5. Field Purchases and Other Costs:	<u>\$78,947.73</u>
6. Handling Charges:	<u>\$5,847.39</u>

TOTAL PROPOSED BUDGET = \$88,754.98

G. PERSONNEL

All personnel costs that are not included elsewhere in the budget/billing form must be listed here. Costs must be listed per task, not personnel type. The following are some examples of tasks: Drafting, data collection, plan, report or budget preparation for _____ (i.e., site classification work plan, 45 day report, or high priority corrective action budget), sampling, field oversight for _____ (i.e. drilling/well installation, corrective action, or early action), or maintenance of _____. The above list is not inclusive of all possible tasks.

Project Manager : 10 hours x \$100.11 per hour = \$1,001.10

Task to be performed for the above hours: Offsite access negotiation

Sr. Proj. Manager : 2 hours x \$111.23 per hour = \$222.46

Task to be performed for the above hours: Budget preparation; review

Sr. Proj. Manager : 8 hours x \$111.23 per hour = \$889.84

Task to be performed for the above hours: Review & planning; Reimbursement

Project Manager : 8 hours x \$100.11 per hour = \$800.88

Task to be performed for the above hours: Subcontractor coordination; Verizon; Paving Company

Project Manager : 8 hours x \$100.11 per hour = \$800.88

Task to be performed for the above hours: CAP & Budget amendment preparation, Reimbursements

Sr. P.G. : 2 hours x \$122.35 per hour = \$244.70

Task to be performed for the above hours: Review & certify budget; reimbursements

_____ : _____ hours x _____ per hour = \$0.00

Task to be performed for the above hours: _____

_____ : _____ hours x _____ per hour = \$0.00

Task to be performed for the above hours: _____

_____ : _____ hours x _____ per hour = \$0.00

Task to be performed for the above hours: _____

_____ : _____ hours x _____ per hour = \$0.00

Task to be performed for the above hours: _____

TOTAL PERSONNEL COSTS: \$3,959.86

I. FIELD PURCHASES AND OTHER COSTS

All field purchases must be listed below in a time and materials format. Handling charges should not be added here; use Section J, Handling Charges to calculate the handling charges.

[illegible]

TEMA NO. 891209; 910936; 980746

Other Costs - A listing and description of all other costs which will be/were incurred and are not specifically listed on this form should be attached. The listing should include a cost breakdown in a time and materials format.

170' Trench on Circle K Property			
Trench excavation/transportation/disposal	<u>60.35</u> per yard x	<u>166.7</u> yards =	<u>\$10,060.35</u>
Trench Backfill	<u>21.17</u> per yard x	<u>166.7</u> yards =	<u>\$3,529.04</u>
Transport & Disposal of 2241.35 tons (1,494.23 yards) contaminated soil			
Excavation /Transportation/ Disposal	<u>\$60.35</u> per yard X	<u>1,494.23</u> yards =	<u>\$90,176.78</u>
Backfill (material + transport)	<u>\$21.17</u> per yard x	<u>1,494.23</u> yards =	<u>\$31,632.85</u>
Overburden removal/replacement	<u>\$6.88</u> per yard x	<u>400</u> yards =	<u>\$2,752.00</u>
Restore water			<u>\$9,355.70</u>
Restore Electric			<u>\$2,490.59</u>
Compactor			<u>\$750.00</u>
laborer			<u>\$12,240.00</u>
Pregrade for paving			<u>\$10,683.09</u>
Total amount allowed using Subpart H			<u>\$173,670.39</u>
Amount approved previously			<u>(\$94,722.66)</u>
Total amount requested to be added to Section I - Other Costs			<u><u>\$78,947.73</u></u>
Total Other Costs =	<u>\$78,947.73</u>		
Subtotal I-J =	<u>\$0.00</u>		
Total pages I-1 and I-2:	<u>\$78,947.73</u>		

J. HANDLING CHARGES

Handling charges are eligible for payment on subcontractor billings and/or field purchases only if they are equal to or less than the amounts determined on the following table:

Subcontractor or Field Purchase Cost	Eligible Charges as a Percentage Of Cost
\$1 - \$5,000	12%
\$5,001 - \$15,000	\$600 + 10% of amt. Over \$5,000
\$15,001 - \$50,000	\$1,600 + 8% of amt. Over \$15,000
\$50,001 - \$100,000	\$4,400 + 5% of amt. Over \$50,000
\$100,001 - \$1,000,000	\$6,900 + 2% of amt. Over \$100,000

A. Subcontractor Charges

[illegible]

Subtotal J-1 :	\$78,947.73
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TEMA No. 891209; 910936; 980746

B. Field Purchases

Subcontractor	Section in these Forms where Cost is Listed	Subcontractor Amount

Subtotal Page J-2: \$0.00

Subtotal of Pages J-1 and J-2: \$78,947.73

Handling Charge*: \$5,847.39



State of Illinois

ENVIRONMENTAL PROTECTION AGENCY

Mary A. Gade, Director

2200 Churchill Road, Springfield, IL 62794-9276

217/782-6761

April 12, 1993

Broadus Oil Corporation
Attn: Steve Broadus
1006 West Main
Streator, Illinois 61364

Re: LPC #0994905030 -- LaSalle County
Pitstop West
LUST Incident No. 910936
LUST File

Dear Mr. Broadus:

The Reimbursement Eligibility and Deductible Application for the above referenced occurrence has been reviewed. The following determinations have been made based upon this review.

It has been determined that you are eligible to seek corrective action costs in excess of \$10,000.00. The costs must be in response to the occurrence referenced above and associated with the following tanks:

Eligible Tanks

- 1 - 10,000 gallon gasoline
- 4 - 8,000 gallon gasoline
- 1 - 4,000 gallon gasoline
- 1 - 10,000 gallon diesel fuel
- 1 - 1,000 gallon kerosene

This decision constitutes the Agency's preliminary determination regarding your deductible. The Agency reserves the right to change its deductible determination should additional information that would change the determination become available. The final determination regarding your deductible will be made as your request for payment is reviewed.

When your request for payment is submitted, there will be an accounting review followed by a technical review. You will be notified if any additional information is needed to complete these reviews. Following the completion of these reviews, a payment voucher will be prepared. You will be notified of the amount of the voucher, plus any deductions from your request and the reasons for those deductions.

This constitutes the Agency's final decision regarding your eligibility. An underground storage tank owner or operator may appeal Agency eligibility decisions to the Illinois Pollution Control Board (Board), pursuant to

SCREE

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Sections 22.18b(g) and 40 of the Illinois Environmental Protection Act. An owner or operator who seeks to appeal the Agency's decision shall file a petition for a hearing before the Board within 35 days of the date of mailing of the Agency's final decision (35 Illinois Administrative Code 105.102(a)(2)).

For information regarding the filing of an appeal, please contact:

Dorothy Gunn, Clerk
Illinois Pollution Control Board
State of Illinois Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601

312/814-3620

Sincerely,



Angela Aye Tin, Manager
State Sites Unit
Leaking Underground Storage Tank Section
Division of Remediation Management
Bureau of Land

AAT:SLH:jab/694v/62-63

bcc: Division File
Rockford Region
Thelma Knoles-
Stacey Hart

**ILLINOIS ENVIRONMENTAL PROTECTION AGENCY**

1021 North Grand Avenue East, P.O. Box 19276, Springfield, Illinois 62794-9276 • (217) 782-2829
James R. Thompson Center, 100 West Randolph, Suite 11-300, Chicago, IL 60601 • (312) 814-6026

PAT QUINN, GOVERNOR

DOUGLAS P. SCOTT, DIRECTOR

217/782-6762

CERTIFIED MAIL

DEC 08 2009

7007 2560 0003 2089 2609

Broadus Oil Company
Attn: Steve Broadus
1106 West Main Street
Streator, Illinois 61364

Re: LPC #0994905030 - La Salle County
Streator/Plt Stop West (Broadus Oil Corp.)
1106 West Main Street
Leaking UST Incident No. 891209, 910936, and 980746
Leaking UST Technical File

Dear Mr. Broadus:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the Corrective Action Plan Budget (budget) submitted for the above-referenced incident. This budget, dated November 10, 2009, was received by the Illinois EPA on November 18, 2009. Citations in this letter are from the Environmental Protection Act (Act), as amended by Public Act 92-0554 on June 24, 2002, and 35 Illinois Administrative Code (35 Ill. Adm. Code).

The budget is rejected for the reason(s) listed in Attachment A (Sections 57.7(b)(3) and 57.7(c) of the Act and 35 Ill. Adm. Code 734.505(b) and 734.510(b)).

All future correspondence must be submitted to:

Illinois Environmental Protection Agency
Bureau of Land - #24
Leaking Underground Storage Tank Section
1021 North Grand Avenue East
Post Office Box 19276
Springfield, IL 62794-9276

Please submit all correspondence in duplicate and include the Re: block shown at the beginning of this letter.

An underground storage tank system owner or operator may appeal this decision to the Illinois Pollution Control Board. Appeal rights are attached.

EXHIBIT**B**

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If you have any questions or need further assistance, please contact Sam Hale III at (217) 782-6762.

Sincerely,

Clifford L. Wheeler

Clifford L. Wheeler
Unit Manager
Leaking Underground Storage Tank Section
Division of Remediation Management
Bureau of Land

CLW:SH/

Attachment: Appeal Rights
Attachment A

cc: Midwest Environmental Consulting & Remediation Services, Inc.
Leaking UST Claims Unit
BOL File

Appeal Rights

An underground storage tank owner or operator may appeal this final decision to the Illinois Pollution Control Board pursuant to Sections 40 and 57.7(c)(4) of the Act by filing a petition for a hearing within 35 days after the date of issuance of the final decision. However, the 35-day period may be extended for a period of time not to exceed 90 days by written notice from the owner or operator and the Illinois EPA within the initial 35-day appeal period. If the owner or operator wishes to receive a 90-day extension, a written request that includes a statement of the date the final decision was received, along with a copy of this decision, must be sent to the Illinois EPA as soon as possible.

For information regarding the request for an extension, please contact:

Illinois Environmental Protection Agency
Division of Legal Counsel
1021 North Grand Avenue East
Post Office Box 19276
Springfield, IL 62794-9276
217/782-5544

For information regarding the filing of an appeal, please contact:

Illinois Pollution Control Board, Clerk
State of Illinois Center
100 West Randolph, Suite 11-500
Chicago, IL 60601
312/814-3620

Attachment A.

Re: LPC #0994905030 - La Salle County
Streator/Pit Stop West (Broadus Oil Corp.)
1106 West Main Street
Leaking UST Incident No. 891209, 910936, and 980746
Leaking UST Technical File

Citations in this attachment are from the Environmental Protection Act (Act), as amended by Public Act 92-0554 on June 24, 2002, and 35 Illinois Administrative Code (35 Ill. Adm. Code).

1. The budget includes soil disposal and backfill costs that exceed the maximum payment amounts set forth in Subpart H, Appendix D, and/or Appendix E of 35 Ill. Adm. Code 734. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(zz). In addition, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they are not reasonable.
2. The budget includes costs for corrective action that are inconsistent with the associated technical plan. One of the overall goals of the financial review is to assure that costs associated with materials, activities, and services shall be consistent with the associated technical plan. Such costs are ineligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.510(b).

CLW:SH/